



Decision

Matter of: Rotair Industries, Inc.

File: B-231439, B-231440, B-231441

Date: September 8, 1988

DIGEST

Protest that agency improperly manipulated solicited quantities of aircraft control sticks and made an improper sole source award is denied where agency made award under basic ordering agreement to the only source qualified to produce the parts after repeatedly soliciting quotations from alternative sources and failing to receive acceptable alternative quotations. Quantity ordered was less than quantities previously solicited only because basic ordering agreement included a quantity limitation.

DECISION

Rotair Industries, Inc. protests the award of contract No. DAAJ09-88-G-363-17 by the Defense Logistics Agency (DLA) to Bell Helicopter Division, Textron, Inc., for 36 aircraft control sticks. Rotair also protests that DLA improperly canceled prior solicitations and manipulated its quantity requirements for control sticks under request for proposals (RFP) Nos. DLA500-88-R-0141 and DLA500-88-R-A022, and request for quotations (RFQ) No. DLA500-88-R-0366. We dismiss the protest in part and deny it in part.

The control sticks sought under the protested solicitations are flight critical components for which firms other than Bell are required to submit and have approved drawings and specifications for the parts; process/operation sheets which describe critical manufacturing processes and operations; identification of approved sources who will perform critical processes and operations; and other information. The parts have been continuously acquired by DLA's Defense Industrial Supply Center (DISC) from Bell because no alternative source has submitted the required technical data and been found qualified.

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On December 18, 1986, DISC attempted to fill future requirements for the control sticks by issuing RFQ No. DLA500-87-Q-F164 for 20 units. No quotations were received under the RFQ, although a number of vendors, including Rotair, were given copies of the solicitation and, based on Rotair's request, DISC extended the time for submission of quotations. Rotair did not respond in any way to the RFQ, and two other firms, L&S Machine Company, Inc. and Grumman Houston Corporation, indicated that they could not provide quotations because they did not have sufficient data. As a result, no order was placed under the RFQ.

On June 15, 1987, DISC issued a second RFQ, No. DLA500-87-Q-F696, for an additional 68 control sticks. Although a number of firms, including Rotair, were given copies of the RFQ, only Skyline Industries, Inc. submitted a quotation which ultimately was rejected because it did not include the required technical data to demonstrate that the firm could produce an acceptable alternative part. No order was placed under this RFQ.

During this time, since no other firm had submitted an acceptable quotation and Bell was the only firm qualified to produce the control sticks, contracting officials repeatedly encouraged Bell to submit a quotation for the parts. Finally, on November 11, Bell submitted a quotation of \$2,388.53 each for any quantity between 39 and 107 units. The quotation indicated that cost and pricing data had not been requested and would not be supplied. DISC determined, however, that since the order from Bell would be for more than \$100,000, cost and pricing data was required from the firm. Bell was informed of the need for cost and pricing data and award was delayed indefinitely while Bell prepared this information.

On December 3, while discussions continued with Bell, DISC combined the quantities sought under the first two RFQs with its current requirements for a total quantity of 107 units to be acquired under a new solicitation, RFP No. DLA500-88-R-0141. Before the RFP was issued, however, the DISC commodity manager determined that an additional 23 units were needed. As a result, instead of issuing RFP 0141 as scheduled on January 5, 1988, contracting officials prepared another solicitation, RFP No. DLA500-88-R-A022, for a basic quantity of 107 units and an alternate quantity of 130 units. Although RFP A022 was synopsized in the Commerce Business Daily (CBD) on January 20, it, like RFP 0141, was never issued. Instead, on February 2, as a result of the need to fill growing back orders and the lack of any acceptable quotations under the previous solicitations, DISC decided to order 36 control sticks from Bell under its

basic ordering agreement with the Army based on Bell's new catalog price of \$2,732.50 each, which was effective in January 1988. Award was made to Bell on February 10 at a total price of \$98,370. According to DISC, the order from Bell was limited to 36 units even though more control sticks were needed in order to remain within the individual order limit in Bell's basic ordering agreement.

On February 22, Rotair submitted a data package for purposes of obtaining source approval on the control sticks. On March 3 Rotair submitted a quotation, purportedly pursuant to RFP A022, with a price of \$4,100 each for a quantity of 107 units with delivery offered in 660 days. Although the RFP had not been issued, the DISC buyer forwarded Rotair's data package to the DISC Directorate of Technical Operations for source approval. Rotair's data package later was rejected because it did not include all the information required for flight critical components.

On April 28, DISC issued RFQ No. DLA500-88-Q-0366 for an additional quantity of 35 control sticks, again as a flight critical component. The quantity subsequently was increased to 83 units and the closing date was extended until October 1988. According to DISC, Rotair submitted a complete data package in July which the agency's technical activity has agreed to review on an expedited basis, before the October closing date for quotations. Thus, if Rotair's data package is found acceptable, it will be able to compete under RFQ 0366.

As a preliminary matter, Rotair argues that by canceling RFPs 0141 and A022 and making award for a lesser quantity to Bell, the agency violated the procurement regulations governing amendments to solicitations based on changes in quantity. We dismiss this ground of protest since, as discussed above, neither RFP cited by Rotair was ever issued. Instead, DISC ordered 36 units from Bell under its basic ordering agreement, and later issued a new RFQ for an additional quantity; Rotair's application for source approval is currently being considered under that RFQ.

Rotair also argues that by placing the order with Bell for 36 units, DISC violated statutory and regulatory requirements for full and open competition, advance planning and purchasing in economic quantities. Further, according to the protester, DLA improperly manipulated and split the required quantities of control sticks in order to avoid the \$100,000 threshold for the submission of cost and pricing data by Bell under Federal Acquisition Regulation § 15.804-2(a)(1). As explained in detail below, we find these arguments to be without merit.

Rotair does not challenge DISC's determination that the control sticks are flight critical components requiring submission and approval of technical data by firms proposing to supply alternative parts. Since it is clear from the record that until recently, neither Rotair nor any other firm had submitted a complete data package for approval, we have no reason to question the agency's determination that only Bell was qualified to produce the parts when the order was placed. Specifically, when DISC issued the first two RFQs in December 1986 and June 1987, neither Rotair nor any other firm submitted an acceptable quotation although a number of firms, including Rotair, received copies of the RFQs. Since no other source had demonstrated the ability to supply the parts, the contracting officials reasonably decided that the parts would have to be acquired from Bell. Acquisition of the parts from Bell at that time was delayed, however, due to the need for cost and pricing data. In the meantime, DISC again tested the market for alternate sources by synopsising RFP A022 in the CBD in early 1988; this attempt also was fruitless since again no firm other than Bell demonstrated that it could supply the control sticks.

As a result of the delay in procuring the units, a critical supply situation, which Rotair does not dispute, existed in February 1988; according to DISC, by December 1987, the agency already had backorders of 33 units with only 43 due in and an annual demand of 56. Under these circumstances, and because of the long administrative and production lead times and an increased demand for the parts, DISC decided in February 1988 that it was necessary to expeditiously acquire from Bell whatever quantity it could. DISC states that it ordered only 36 units from Bell in order to remain within the quantity limit in Bell's existing basic ordering agreement.

In our view, when faced with an urgent need for the items, DISC clearly acted reasonably in ordering them from the only qualified source. Contrary to Rotair's contention, there is no indication that the order placed with Bell resulted from a lack of advance planning or an attempt to avoid full and open competition. On the contrary, the record shows numerous but unsuccessful attempts by the agency to locate alternate sources, including Rotair. Further, we see no basis to conclude that DISC procured only a limited quantity of control sticks from Bell to avoid the requirements for cost and pricing data. According to DISC, the 36 units ordered from Bell were the maximum quantity available under the terms of Bell's basic ordering agreement. In any event, we fail to see how Rotair was in any way prejudiced by DISC's decision to acquire fewer units from Bell than originally planned; in fact, the effect of the agency's

decision is to increase the quantity for which Rotair will have the opportunity to compete if it is found to be a qualified source.

The protest is dismissed in part and denied in part.




James F. Hinchman
General Counsel